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Security Council Committee established pursuant to resolution 1718 (2006)

Note verbale dated 1 August 2013 from the Permanent Mission of Luxembourg to the United Nations addressed to the Chair of the Committee

The Permanent Mission of Luxembourg to the United Nations presents its compliments to the Chair of the Security Council Committee established pursuant to resolution 1718 (2006) and, in accordance with paragraph 25 of resolution 2094 (2013), has the honour to transmit herewith information on the implementation by Luxembourg of the United Nations sanctions imposed upon the Democratic People's Republic of Korea (see annex).

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Annex to the note verbale dated 1 August 2013 from the Permanent Mission of Luxembourg to the United Nations addressed to the Chair of the Committee

Report of Luxembourg to the Security Council Committee established pursuant to resolution 1718 (2006)

In accordance with paragraph 25 of Security Council resolution 2094 (2013), and in addition to the reports submitted by notes verbales dated 11 February 2008 (see S/AC.49/2008/1) pursuant to paragraph 11 of resolution 1718 (2006), and 21 May 2012 (see document S/AC.49/2012/4) pursuant to paragraph 22 of resolution 1874 (2009), Luxembourg has the honour to transmit to the Security Council Committee established pursuant to resolution 1718 (2006) the following information on the specific measures that it has taken to implement effectively the provisions of paragraphs 8 to 20, 22 to 24, 26 and 30 of resolution 2094 (2013).

I. Measures adopted by the European Union

Under European Union law, Security Council resolutions are implemented by decisions of the Council of the European Union under the Common Foreign and Security Policy.

These decisions are legally binding on member States and transpose the content of Security Council resolutions into European Union law. In order to make their content not only binding on member States, but also directly applicable within them, these decisions need to be incorporated into regulations of the Council of the European Union. In application of these principles, Luxembourg and the other States members of the European Union have jointly implemented the restrictive measures against the Democratic People's Republic of Korea imposed by resolutions 1718 (2006), 1874 (2009), 2087 (2013) and 2094 (2013) as follows:

Council Decision 2013/183/CFSP of 22 April 2013, concerning restrictive measures against the Democratic People's Republic of Korea and repealing Decision 2010/800/CFSP

This European instrument reaffirms the measures already implemented by Security Council resolutions 1718 (2006), 1874 (2009) and 2087 (2013), and affirms the commitment of the European Union to implement all of the measures outlined in resolution 2094 (2013). For the sake of clarity, Decision 2013/183/CFSP includes all of the restrictive measures implemented by the Security Council against the Democratic People's Republic of Korea in a consolidated instrument, and provides a framework for the specific implementation by the European Union of the measures set out in resolutions 1718 (2006), 1874 (2009), 2087 (2013) and 2094 (2013), including:

- Placing an embargo on arms and related materiel.
- Prohibiting the export of certain items, equipment, goods and technology that could contribute to the Democratic People's Republic of Korea nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes, or to the evasion of measures imposed by the Security Council.

- Prohibiting the acquisition of arms, related materiel and other goods and technology from the Democratic People's Republic of Korea.
- Prohibiting the provision of technical training, advice, services, assistance or brokering services, or other intermediary services, related to prohibited items and technology or to the provision, manufacture, maintenance and use of those items.
- Prohibiting the provision of financing or financial assistance related to prohibited items and technology, including, in particular, grants, loans and export credit insurance, as well as insurance and reinsurance.
- Prohibiting participation in activities the object or effect of which is to circumvent the measures imposed by the Security Council resolutions against the Democratic People's Republic of Korea.
- Prohibiting trading in gold, precious metals or diamonds with the Government of the Democratic People's Republic of Korea.
- Prohibiting the provision of newly printed or minted banknotes and coinage to the Democratic People's Republic of Korea.
- Prohibiting the export of luxury goods to the Democratic People's Republic of Korea.
- Prohibiting the provision of financial support for international trade to the Democratic People's Republic of Korea, where such financial support could contribute to its nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes.
- Prohibiting the entry into new commitments for grants, financial assistance, or concessional loans to the Democratic People's Republic of Korea.
- Enhancing the monitoring of financial institutions within the jurisdiction of States members of the European Union with banks domiciled in the Democratic People's Republic of Korea, and their branches and subsidiaries and other financial entities domiciled outside the country.
- Prohibiting the opening of new branches, subsidiaries, correspondent banks or representative offices of banks of the Democratic People's Republic of Korea.
- Requiring the inspection of cargo to and from the Democratic People's Republic of Korea, if information provides reasonable grounds to believe that the cargo in question contains items whose supply, sale, transfer or export is prohibited under Security Council resolutions, as well as additional pre-arrival or pre-departure information for all aircraft and vessels transporting cargo to and from the Democratic People's Republic of Korea.
- Requiring the seizure and disposal of prohibited items, in accordance with the provisions of Security Council resolutions.
- Denying entry into any European Union port of any vessel that has refused to allow an inspection, and denying permission to any aircraft to land in or take off from member States' airports, or to overfly European Union territory.
- Prohibiting the provision of bunkering or ship supply services if information provides reasonable grounds to believe that the vessels carry prohibited items.

- Restricting certain individuals' entry into or transit through the territory of member States, in accordance with Security Council resolutions.
- Freezing funds and economic resources of persons and entities designated by the sanctions Committee or by the Security Council.
- Preventing the specialized teaching or training of nationals of the Democratic People's Republic of Korea in specific disciplines.
- Enhancing vigilance over diplomatic personnel of the Democratic People's Republic of Korea, in accordance with international law.
- Prohibiting the granting of claims submitted by certain persons, entities or bodies, in connection with any contract or transaction the performance of which was affected by measures decided on pursuant to Security Council resolutions.

Regulations of the Council of the European Union

Council regulations implement the elements of the above-mentioned decisions which fall within the competence of the European Union under the Treaty on the Functioning of the European Union, in particular with a view to ensuring their uniform application by economic operators in all European Union member States.

Council regulations are binding in their entirety and are directly applicable in all States members of the European Union as soon as they have been published in the *Official Journal of the European Union*. Funds and economic resources are frozen directly and immediately by Council regulations. No further national implementing provisions are necessary in this respect.

Council Regulation (EC) No. 539/2001 of 15 March 2001 (and its subsequent amendments) listing the third countries whose nationals must be in possession of visas when crossing the external borders of member States and those whose nationals are exempt from that requirement. This regulation requires that nationals of the Democratic People's Republic of Korea be in possession of a visa to cross the external borders of the European Union. Entry restrictions to the territory are implemented through the visa application process.

Council Regulation (EC) No. 329/2007 of 27 March 2007 concerning restrictive measures against the Democratic People's Republic of Korea containing the list of goods and technology adopted by the sanctions Committee through its decision of 1 November 2006.

Updates to the restrictive measures against the Democratic People's Republic of Korea are made through amendments to Regulation (EC) No. 329/2007 that reflect the decisions of the sanctions Committee. Updates were made through the following regulations:

Commission Regulation (EC) No. 117/2008 of 28 January 2008 amending Council Regulation (EC) No. 329/2007 by replacing annex I with a new annex presenting the goods and technology subject to the ban by reference to annex I to Council Regulation (EC) No. 1334/2000 (replaced by Council Regulation (EC) No. 428/2009 of 5 May 2009) setting up a Community regime for the control of exports of dual-use items and technology.

Council Regulation (EU) No. 1283/2009 of 22 December 2009 amending Council Regulation (EC) No. 329/2007 to include measures introduced by Security Council resolution 1874 (2009).

Council Regulation (EU) No. 567/2010 of 29 June 2010 amending Council Regulation (EC) No. 329/2007 by replacing its annex Ia with the text set out in the annex to Council Regulation (EU) No. 567/2010, containing a revised list of prohibited items, materials, equipment, goods and technology, in order to maintain the effectiveness of the measures.

Council Regulation (EU) No. 296/2013 of 26 March 2013 amending Council Regulation (EC) No. 329/2007 to include certain measures provided for in Security Council resolutions 2087 (2013) and 2094 (2013), including:

- Prohibiting the supply, sale or transfer to the Democratic People's Republic of Korea of additional items, materials, equipment, goods and technology which could contribute to the country's nuclear-related, other weapons of mass destruction-related or ballistic missile-related programmes, including technical assistance and brokering services and financing and financial assistance related to prohibited goods and technology.
- Including a provision stating that, where the Security Council has provided for a prohibition on financial services, this includes the provision of insurance and reinsurance services.
- Prohibiting the opening of new branches, subsidiaries or representative offices of banks of the Democratic People's Republic of Korea in the territories of member States, the establishment of new joint ventures, or the taking of an ownership interest by banks of the Democratic People's Republic of Korea with banks in the jurisdiction of member States.
- Including a provision stating that no claims in connection with any contract or transaction, the performance of which has been affected by the range of measures imposed under Security Council resolutions, shall be satisfied, if made by designated persons or entities or any other persons or entity of the Democratic People's Republic of Korea.
- Modifying the list of items set out in annex Ia to Regulation (EC) No. 329/2007, the supply, sale, transfer or export of which to the Democratic People's Republic of Korea is prohibited, to include certain items listed in annex III to Security Council resolution 2094 (2013).

Council Regulation (EU) No. 696/2013 of 22 July 2013 amending Council Regulation (EC) No. 329/2007 to include the following elements of Security Council resolution 2094 (2013):

- Including additional inscription criteria regarding the freezing of assets of persons or entities acting on behalf of or at the direction of designated persons or entities or entities owned or controlled by them, including through illicit means.
- Expanding the scope of the prohibition on any technical training, advice, services or technical assistance in relation to prohibited items to include other intermediary services.

- Prohibiting the establishment and maintenance of correspondent relationships with banks and financial institutions in the Democratic People's Republic of Korea or the opening of bank accounts in the Democratic People's Republic of Korea, where there are reasonable grounds to believe that this could contribute to the nuclear-related, other weapons of mass destruction-related or ballistic missile-related programmes or other prohibited activities of the Democratic People's Republic of Korea.
- Requiring the inspection of any cargo originating in or destined for the Democratic People's Republic of Korea or brokered or facilitated by that country, its nationals, or by individuals or entities acting on their behalf, where there are reasonable grounds to believe that the cargo contains prohibited items.
- Denying entry to ports of European Union member States to vessels refusing to undergo inspection.
- Prohibiting any aircraft from taking off, landing in or overflying their territory, if there are reasonable grounds to believe that it contains prohibited items.

These regulations were supplemented by the following implementing regulations:

Commission Implementing Regulation (EU) No. 1355/2011 of 20 December 2011 amending the list of persons, entities and bodies to whom the freezing of funds and economic resources should apply.

Commission Implementing Regulation (EU) No. 137/2013 of 18 February 2013 amending the list of persons, entities and bodies to whom the freezing of funds and economic resources should apply, in accordance with the decision of the Security Council Committee established pursuant to resolution 1718 (2006), of 2 May 2012, and with annexes I and II to resolution 2087 (2013).

Commission Implementing Regulation (EU) No. 370/2013 of 22 April 2013 amending the list of persons, entities and bodies to whom the freezing of funds and economic resources should apply, in accordance with annexes I and II to resolution 2094 (2013).

II. Measures adopted by Luxembourg

Under article 14, paragraph 1, of Regulation (EU) No. 329/2007, European Union member States shall lay down the rules on penalties applicable to infringements of the regulation and shall take all measures necessary to ensure that they are implemented.

The following measures are currently in force in Luxembourg.

(a) Arms embargo

In accordance with article 5 of the amended Act of 15 March 1983 on arms and ammunition, the import, manufacture, transformation, repair, acquisition, purchase, possession, stockpiling, transport, transfer, sale, export and trade of arms and ammunition are subject to authorization by the Minister of Justice. Furthermore, in accordance with the amended Act of 5 August 1963 regulating the import, export and transit of goods and related technology and with the Grand Ducal Regulation of 31 October 1995 related to the import, export and transit of arms, ammunition and

materiel specially designed for military use, and of related technology, an export licence is mandatory for the sale, supply, transfer or export of arms and related materiel. This applies to all items on the European Union Common Military List. Licence applications are examined, using the relevant criteria, in the light of the measures imposed by paragraph 8 of resolution 1718 (2006), paragraphs 9 and 10 of resolution 1874 (2009), paragraph 5 of resolution 2087 (2013), paragraphs 7 and 20 of resolution 2094 (2013) and the exceptions set out in paragraph 10 of resolution 1874 (2009). Where applicable, Luxembourg will ensure that the Committee is notified prior to any shipment of small arms and light weapons or related materiel. To date, no such shipments have been made from Luxembourg. Article 9, paragraph 1, of the Act of 5 August 1963 regulating the import, export and transit of goods and related technology, as amended by the Act of 4 March 1998, refers to articles 231, 249 to 253 and 263 to 284 of the General Act on Customs and Excise of 18 July 1977, which criminalize violation of or attempted violation of the provisions of the aforementioned Act of 5 August 1963.

(b) Travel ban

Nationals of the Democratic People's Republic of Korea travelling to Luxembourg require a visa to enter the territory of the European Union. The travel restrictions are implemented through the visa application process. Bans on the issuance of visas are implemented primarily by the Convention implementing the Schengen Agreement of 19 June 1990, which regulates the entry of third-country nationals into the Schengen area, of which Luxembourg is a part. Article 5, paragraph 1, of the Convention sets out the conditions for entry into the territories of the Contracting Parties. Paragraph 2 of that article states that an alien who does not fulfil all those conditions must be refused entry into the territories of the Contracting Parties. Since the individuals affected by measures ordered by the Security Council do not meet the conditions set out in article 5, paragraph 1 (e), of the Convention, which states that the alien must not be considered to be a threat to public policy, national security or the international relations of any of the Contracting Parties, these individuals may not be granted entry into the territory of Luxembourg. Pursuant to articles 15 and 18 of the Convention, this prohibition of entry into the territory applies both to uniform short-stay visas valid for the entire territory of the Contracting Parties and to national long-stay visas. Furthermore, the Act of 29 August 2008 on the free movement of persons and immigration provides that individuals who are not allowed into Luxembourg shall be sent back.

(c) Asset freeze and due diligence of financial operators

Luxembourg's legislation on the financial sector establishes professional obligations and codes of conduct that must be observed at all times and in an ongoing manner by financial institutions. These institutions must therefore exercise customer due diligence and must cooperate with the authorities, particularly the Financial Sector Monitoring Committee. The legislative framework is supplemented by circulars issued by the Committee, in which it specifies how different legal provisions concerning monitored entities should be applied; publishes prudential regulations specific to particular areas of activity; and makes recommendations concerning financial sector activities. Committee circulars Nos. 06/247 of 8 June 2006 and 10/458 of 11 May 2010 on the subject of the Democratic People's Republic of Korea, and No. 13/567 of 27 June 2013, require all institutions to apply

enhanced due diligence measures in respect of any business relationship with or transaction for a person or entity from the Democratic People's Republic of Korea.

Before establishing any business relationship or conducting any transaction, institutions must verify the identity of the customer or beneficial owner. Then, throughout the relationship with the customer, they must monitor the customer's transactions, including with respect to the source of the customer's funds. Any international measures or sanctions adopted at the political level by the United Nations Security Council are introduced into Luxembourg through European Union regulations that are directly applicable under domestic law. In the event that a customer of a financial institution is targeted by such an international sanction, the institution must apply the sanction by freezing the customer's assets without delay and notifying the Ministry of Finance.

Additional measures to strengthen the legal framework to combat the financing of proliferation are under consideration in Luxembourg. The new legislation aims to update current provisions in force in Luxembourg and to integrate them into a coordinated and consistent set of norms, by aligning the legal framework with recommendation 7 of the Financial Action Task Force on targeted financial sanctions relating to proliferation, as well as the new Task Force guidance on the implementation of financial provisions of Security Council resolutions to counter the proliferation of weapons of mass destruction, revised in June 2013 in the light of resolution 2094 (2013) in particular. Luxembourg will inform the Committee of the adoption of the revised legal framework and provide details of the measures contained therein in due course.

(d) Ban on aircraft taking off from, landing in or overflying the country when there are reasonable grounds to believe that prohibited items are on board

Civilian flights are the concern of the Directorate of Civil Aviation. There are currently no flights between Luxembourg and the Democratic People's Republic of Korea. Authorizations for military flights are requested from the Defence Directorate through the Ministry for Foreign Affairs. The Directorate of Civil Aviation and the Defence Directorate implement the applicable restrictive measures.

(e) Export ban on dual-use goods

Luxembourg is a member of various export control regimes, including the Nuclear Suppliers Group, the Zangger Committee, the Missile Technology Control Regime, the Australia Group and the Wassenaar Arrangement. The control lists of these regimes have been incorporated into Council Regulation (EC) No. 428/2009 of 5 May 2009 (dual-use goods and technology) and Council Common Position 2008/944/CFSP of 8 December 2008 (control of exports of military technology and equipment), which are updated regularly and are applicable in Luxembourg.

The Grand Ducal Regulation of 2 September 2011 regulating the export and transit of dual-use goods and technology aligns the system established under the amended Act of 5 August 1963 regulating the import, export and transit of goods and related technology with the provisions of Council Regulation (EC) No. 428/2009 of 5 May 2009, setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items. Export licence applications must be accompanied by an end-user certificate issued in the name of the recipient or end user. Operators (exporters) who intend to use the Community General Export

Authorization, provided for in article 9, paragraph 1, of Council Regulation (EC) No. 428/2009, must first register with the Licensing Office (Ministry of Economic Affairs and Foreign Trade). A licence is required for transit under the same terms as those for exports.

As part of the efforts to combat the export, transit and import of sensitive goods, the Customs and Excise Department of the Ministry of Finance established on 1 January 2004, in the air freight section of Luxembourg airport, a new special unit solely responsible for air freight issues. The Unit, called the Risk-Analysis and Targeting Unit, which is assisted by a surveillance brigade, is responsible for targeting sensitive air freight leaving and entering European Union territory through Luxembourg airport. In Luxembourg, Findel airport is the only direct point of entry into and exit from European Union territory, since the country is surrounded by European Union member States.

Similarly, under the aforementioned Act of 5 August 1963, the Unit conducts regular inspections by targeting documents or goods transiting through Luxembourg airport.

(f) Luxury goods

The Grand Ducal Regulation of 19 October 2007, requiring licences for the export and transit of certain goods (luxury goods) to the Democratic People's Republic of Korea, seeks to implement the ban on the export of certain luxury goods to that country. The list that appears in the annex to that regulation includes items listed in annex IV to resolution 2094 (2013).